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CITATIONS

291615—54——1

Miscellaneous:

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 431

BRUCE G. BARBER, DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, SAN FRANCISCO, CALIFORNIA, PETITIONER

v.

PEDRO GONZALES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

The respondent in his brief contends that in the Philippine Independence Act of 1934 Congress did not, and under the Constitution could not, apply the deportation statutes to citizens of the Philippine Islands then residing in the United States (Resp. br. 20–26). That is, respondent not only contends, as the court below held (R. 28–29), that since he was a noncitizen national of the United States when he came from the Philippine Islands to the United States in 1930, he did not make an "entry" into the United States within the meaning

of Section 19 (a) of the Immigration Act of 1917, but also, contrary to the court below (R. 26–27), that notwithstanding the provisions of the Philippine Independence Act he has continued to be and still is a national of the United States and, as such, is not subject to deportation. We submit that the history of the relationship of the Philippine Islands and its inhabitants to the United States, together with the constitutional principles which this Court has derived from that relationship, completely dispose of respondent's contentions as to what Congress could and did do.

I

BOTH THE HISTORICAL RELATIONSHIP BETWEEN THE PHILIPPINE ISLANDS AND THE UNITED STATES AND THE DECISIONS OF THIS COURT MAKE CLEAR THAT THE STATUS OF CITIZENS OF THE PHILIPPINE ISLANDS AS NATIONALS OF THE UNITED STATES HAS BEEN SUBJECT TO MODIFICATION OR TERMINATION AT ANY TIME BY THE CONGRESS

The historical relationship of the Philippine Islands to the United States. Following the war with Spain, the Philippine Islands were ceded to the United States by the Treaty of Paris of December 10, 1898 (30 Stat. 1754), which provided in Article IX that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." As this Court noted in *Balzac* v. *Porto Rico,* 258 U. S. 298, 306, "Few questions have been the subject of such discussion

and dispute in our country as the status of our territory acquired from Spain in 1899." By the Act of July 1, 1902 (32 Stat. 691, 692), Congress declared that all inhabitants of the Philippine Islands continuing to reside there who were Spanish subjects on April 11, 1899, and their children subsequently born, shall "be citizens of the Philippine Islands and as such entitled to the protection of the United States * * *."[1] Later, in 1916, in Section 2 of the Jones Act (39 Stat. 545, 546), this provision of the 1902 Act governing the political status of the inhabitants of the Philippine Islands was repeated. The Act of April 12, 1900, 31 Stat. 77, 79, made a similar provision for the inhabitants of Puerto Rico. However, in contrast with the Act of March 2, 1917, 39 Stat. 951, 953, which declared the inhabitants of Puerto Rico to be citizens of the United States, no act of Congress has ever declared the citizens or inhabitants of the Philippine Islands to be citizens of the United States.[2]

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[1] Except for those who elected to maintain their allegiance to Spain.

[2] The withholding of American citizenship from Filipinos is unique in our history. In every other case where new territory was ceded to the United States, provision was made for the eventual admission of the inhabitants thereof to United States citizenship. In the opinion for the Court in *Downes* v. *Bidwell*, 182 U. S. 244, 280, Mr. Justice Brown observed:

> In all its treaties hitherto the treaty-making power has made special provision for this subject; in the cases of Louisiana and Florida, by stipulating that "the inhab-

By the series of steps summarized in *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, 674–676, the subsequent political history of the Philippine Islands has consisted of a steady increase in local self-government and a progressive withdrawal of United States rule. The culmination of this development began with the Philippine Independence Act of 1934 (48 Stat. 456) which, in addition to Sections 8 and 14 here involved, provided for the drafting of a constitution for the Philippine Islands (Section 1–4), a partial subjection of the products of the Philippine Islands to American tariffs (Section 6), and other steps toward complete independence—which was to take effect in ten years. Because of the intervention of World War II, however, the Philippine Islands did not become fully independent until 1946. Presidential Proclamation No. 2696, July 4, 1946, 11 F. R. 7517.

The constitutional status of the Philippine Islands and its inhabitants. The upshot of a series of decisions by this Court as to the relationship

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itants shall be incorporated into the Union of the United States and admitted as soon as possible * * * to the enjoyment of all the rights"; in the case of Mexico, that they should "be incorporated into the Union, and be admitted at the proper time, (to be judged of by the Congress of the United States,) to the enjoyment of all the rights of citizens of the United States"; in the case of Alaska, that the inhabitants who remained three years, "with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights," etc.;

of the Philippine Islands to the United States was summarized in *Hooven & Allison Co.* v. *Evatt,* 324 U. S. 652, 673, 674–675, as follows:

> That our dependencies, acquired by cession as the result of our war with Spain, are territories belonging to, but not a part of, the Union of states under the Constitution, was long since established by a series of decisions in this Court beginning with *The Insular Tax Cases* in 1901; *De Lima* v. *Bidwell, supra; Dooley* v. *United States, supra,* 182 U. S. 222; *Downes* v. *Bidwell,* 182 U. S. 244; *Dooley* v. *United States,* 183 U. S. 151; and see also *Public Utility Commissioners* v. *Ynchausti & Co.,* 251 U. S. 401, 406–407; *Balzac* v. *Porto Rico,* [258 U. S. 298] * * *
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> The status of the Philippines as territory belonging to the United States, but not constitutionally united with it, has been maintained consistently in all the governmental relations between the Philippines and the United States. * * *

Since the Philippine Islands were at no time incorporated into the United States, persons born in the Philippine Islands have not acquired United States citizenship by birth pursuant to the Fourteenth Amendment. Cf. *Elk* v. *Wilkins,* 112 U. S. 94; Burdick, *Law of the American Constitution* (1922) pp. 327–328.

As noted above, Congress in 1902 and again in 1916 declared the inhabitants of the Philippine

Islands and their children subsequently born "to be citizens of the Philippine Islands and as such entitled to the protection of the United States." *Gonzalez* v. *Williams,* 192 U. S. 1, 12–13, held that the native inhabitants of Puerto Rico, prior to the grant of United States citizenship to them in 1917, could not be excluded from this country under a general statute relating to the exclusion of "aliens." Emphasizing that it was not passing upon the power of Congress to provide for the exclusion of such persons, this Court concluded that the statute before it "relates to foreigners as respects this country, to persons owing allegiance to a foreign government, and citizens or subjects thereof," rather than to "citizens of Porto Rico, whose permanent allegiance is due to the United States. * * *" Similarly, in *Toyota* v. *United States,* 268 U. S. 402, 411, it was said that "The citizens of the Philippine Islands are not aliens." However, the *Toyota* decision recognizes not only that citizens of the Philippine Islands are not citizens of the United States, but also that except for a limited class they were racially ineligible for citizenship. This ineligibility for naturalization continued until 1946 (60 Stat. 416; 8 U. S. C. 703).

The chief characteristic of the status of a non-citizen national of the United States is that regardless of his rights and privileges in relation to the United States, his position in the eyes of other nations is substantially that of a citizen of

the United States. He travels on an American passport and he receives American diplomatic protection while he is abroad. Conversely, his status under international law in no way governs his position within the territory of the United States.[3]

[3] While citizens of the various dominions in the British Commonwealth share a common British nationality, that nationality is relevant only in relations with countries outside of the Commonwealth. Within the Commonwealth, such persons are not regarded as primarily British, but as citizens of their respective dominions, and when in other dominions they may be subject to deportation as aliens. See, e. g. *Ex parte Banta Singh* (1938) 1 D. L. R. 789. The insignificance of the concept of "British nationality" within the British Commonwealth has been described as follows:

> * * * Within the Commonwealth a British subject is no more at liberty to roam from Dominion to Dominion than is an alien, in the strict sense of the word, at liberty to enter any part of the Commonwealth. *Nowhere indeed does the term "British subject" mean so little as it does within the British Commonwealth itself.* [Emphasis supplied.]

Fraser, *Control of Aliens in the British Commonwealth of Nations* (London, 1940) 28.

While Fraser notes that Great Britain, herself, has accorded equality of treatment to British subjects from all parts of the Empire, he adds that, "Her very remoteness from India freed the United Kingdom from the unpleasant necessity of herself enacting legislation aimed at Indians," (p. 31). This unmistakably implies that only considerations of legislative policy have prevented Great Britain from treating its noncitizen nationals as aliens. Thus, prior to enactment of new legislation on the subject in 1914, it was held, without dissent, that a naturalized citizen of Australia, who had taken an oath of allegiance to the king and was entitled to British protection in foreign countries, was nonetheless an alien in

Thus, the inhabitants of the Philippine Islands, while admittedly not citizens of the United States, were entitled to the "protection of the United States" and owed "permanent allegiance" to the United States. This status has become known as that of a "national", as distinguished from a "citizen", or a "non-citizen national." Thus, the Harvard Law School, Research in International Law, draft convention on Nationality, contains the following comment (23 Am. J. Int. L. sp. supp., p. 23):

> The term "nationality" has reference to the position of a natural person from the standpoint of international law. Every person permanently attached to a state has its nationality, whatever may be his particular rights and duties with regard to the state. These are dependent upon the constitution and laws of the state. Nationality does not necessarily involve the right or privilege of exercising civil or political functions. *Minor* v. *Happersett* (1874), 21 Wallace 162. Thus nationality has a broader meaning than "citizenship," for which it is frequently used as a synonym. * * *
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> * * * Its use has become common in the United States since the acquisition of the Philippine Islands and other insular pos-

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Great Britain. *Ex parte Markwald*, [1918] 1 K. B. 617; *Markwald* v. *Attorney General*, [1920] 1 Ch. 348; see Wilson, *The Imperial Conference of 1937*, 32 Am. J. Int. Law 335, 337.

> sessions having inhabitants who, though they have American nationality and are entitled to full protection abroad by the Government of the United States, have not the status of "citizens of the United States," within the meaning of Article 14 of the Amendments to the Constitution.

This distinction between "national" and "citizen" was written into Section 101 of the Nationality Act of 1940 (54 Stat. 1137, 8 U. S. C. 501) as follows:

> (a) The term "national" means a person owing permanent allegiance to a state.
>
> (b) The term "national of the United States" means (1) a citizen of the United States or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. It does not include an alien.

Congress was specifically aware that this distinction reflected the position of "the inhabitants of the various outlying possessions who owe permanent allegiance to the United States but have not the status of citizens of the United States." Hearings before the House Committee on Immigration and Naturalization on *Bills To Revise and Codify the Nationality Laws of the United States into a Comprehensive Nationality Code* (1940), p. 412. The distinction was carried forward in Section 101 (a) (21) and (22) of the Immigration and Nationality Act of 1952 in relation to inhabitants

of American Samoa and Swain's Island (66 Stat. 163, 169).

There is no basis for the respondent's suggestion (Resp. br. pp. 22–27) that the Constitution equates the incidents and permanence of non-citizen nationality to those of citizenship. It cannot be contended that a non-citizen national lacks only the political rights of a citizen, such as the right to vote, since such political rights do not necessarily attach to citizenship. *Minor* v. *Happersett,* 21 Wall. 162. What is involved here is whether a non-citizen national has a constitutionally protected right to enter and remain in the United States. That a citizen of the United States has such a right to enter and reside in the United States is beyond dispute. *Colgate* v. *Harvey,* 296 U. S. 404, 429; *Paul* v. *Virginia,* 8 Wall. 168, 180; *Crandall* v. *Nevada,* 6 Wall. 35, 44. But it has never been seriously suggested that a non-citizen national enjoys such rights. Magoon denied it in 1900 following the Treaty of Paris, saying that, "The inhabitants of the islands acquired by the United States during the late war with Spain, not being citizens of the United States, do not possess the right of free entry into the United States. That right is appurtenant to citizenship. The rights of immigration into the United States by the inhabitants of said islands are no more than those of aliens of the same race coming from foreign lands." *Magoon's Reports* (1902) p. 120. The implication that Congress is

free under the Constitution to define the status of the inhabitants of territory acquired by the United States was confirmed by this Court in *Downes* v. *Bidwell,* 182 U. S. 244, 279–280, in the opinion of Mr. Justice Brown:

> We are also of opinion that the power to acquire territory by treaty implies not only the power to govern such territory, but to prescribe upon what terms the United States will receive its inhabitants, and what their *status* shall be in what Chief Justice Marshall termed the "American Empire." There seems to be no middle ground between this position and the doctrine that if their inhabitants do not become, immediately upon annexation, citizens of the United States, their children thereafter born, whether savages or civilized, are such, and entitled to all the rights, privileges and immunities of citizens. If such be their *status,* the consequences will be extremely serious. Indeed, it is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions and modes of life, shall become at once citizens of the United States.[4]

No principle of international law is inconsistent with this conclusion. 2 Hyde, *International Law* (rev. ed., 1945), at 1092.

[4] On the proposition that it was not necessary to confer citizenship on the inhabitants of newly acquired territory

As noted above, there is nothing to the contrary in the holding in *Gonzales* v. *Williams, supra.* Moreover, in *Balzac* v. *Porto Rico,* 258 U. S. 298, 308, in discussing the effect of the grant of United States citizenship to Puerto Ricans in 1917, this Court stated:

> * * * What additional rights did it give them? It enabled them to move into the continental United States and becoming residents of any State there to enjoy every right of any other citizen of the United States, civil, social and political. A citizen of the Philippines must be naturalized before he can settle and vote in this country. Act of June 29, 1906, c. 3592, § 30, 34 Stat. 606. Not so the Porto Rican under the Organic Act of 1917.

The clear implication of the quoted language is that non-citizen nationals have no constitutionally protected rights to enter or reside in the United States. Thus, even if respondent were correct in his contention that his status as a non-citizen national cannot be terminated except by his consent or voluntary act, it would not follow that he must be permitted to remain in the United States.

Moreover, it is clear that his entire status as a non-citizen national was subject to modification

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there was agreement among the several justices writing opinions. See opinion of Mr. Justice White, joined in by Justices Shiras and McKenna (182 U. S. at 306), and opinion of Mr. Chief Justice Fuller, joined in by Justices Harlan, Brewer, and Peckham (182 U. S. at 369).

or termination by Congress. By analogy to the position of the natural-born citizen, respondent asserts that since he acquired his status as a non-citizen national by birth in the Philippine Islands, he cannot be deprived of that status except by a voluntary act of renunciation or expatriation, although he has since become a citizen of the Republic of the Philippines, an independent foreign state. A major purpose of our nationality laws is to eliminate just such problems of dual nationality as would flow from the respondent's argument. See, e. g., *Kawakita* v. *United States*, 343 U. S. 717. It was to avoid such consequences that this Court, in *Downes* v. *Bidwell, supra,* recognized a plenary power in Congress to prescribe the status of the inhabitants of territory not incorporated into the United States.

Respondent's argument that his allegiance to the United States precluded the termination of his status as a non-citizen national of the United States, is equally without substance. In the Nationality Act of 1940 and in Section 101 (a) (22) of the succeeding Immigration and Nationality Act of 1952, Congress defined "national of the United States" as including "a person who, though not a citizen of the United States, owes permanent allegiance to the United States." "Permanent allegiance", as thus used to describe a non-citizen national, does not mean an unbreakable bond, but merely distinguishes the unqualified

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allegiance owed by a national from the temporary, limited allegiance owed to the United States by an alien who is only temporarily in the United States and who owes his "permanent" allegiance to the country of which he is a national. *United States* v. *Wong Kim Ark,* 169 U. S. 649, 657; *Carlisle* v. *United States,* 16 Wall. 147, 154.

There is no doubt that Congress so used the phrase "permanent allegiance" in Section 101 (b) (8 U. S. C. 501 (b)) of the Nationality Act; for that provision originated in the nationality code proposed by the State, Labor and Justice Departments and was characterized as follows in the explanatory report submitted to the Congress (Hearings, *ibid.,* p. 412):

> The nationals of a state owe permanent allegiance to the state or the personal sovereign thereof, as distinguished from the obligation of aliens temporarily residing or sojourning in the territory of the state, sometimes called "temporary allegiance," to obey the laws (*Carlisle* v. *United States,* 16 Wall. 147). The word "permanent" in this connection means continuous, or of a lasting nature, as distinguished from "temporary," but it does not connote an indissoluble relationship. *Thus, the "permanent allegiance" owed to the United States by Philippine citizens may continue until terminated at the end of the 10-year period prescribed in the act of Congress of March 24, 1934.* It was permanent allegiance which was referred

to by Justice Iredell, in *Talbot* v. *Jansen*, 1795, 3 Dall. 133, 164, when he said:

> "By allegiance I mean the tie by which a citizen of the United States is bound as a member of the society."[5] [Emphasis supplied.]

Again, while persons in respondent's position were liable for American military service during World War II, the same result would have followed if the Philippine Islands were then independent, for such persons would then have been allied aliens. With the independence of the Philippine Islands, respondent, as a citizen of the Philippines, owes "permanent" allegiance to the Republic of the Philippines, rather than to the United States; he must look to the Republic of the Philippines, rather than to the United States, for passports and diplomatic protection abroad (*Cabebe* v. *Acheson*, 183 F. 2d 795 (C. A. 9)); and his liability for military service in this country is no different from that of other aliens. 50 U. S. C. App. (Supp. V) 454 (a).

II

IN ANY EVENT, CONGRESS COULD MODIFY THE STATUS OF CITIZENS OF THE PHILIPPINE ISLANDS AS NATIONALS OF THE UNITED STATES AS AN INCIDENT TO PROVIDING NATIONAL INDEPENDENCE FOR THE PHILIPPINES

However, it is not necessary to decide here what respondent's rights as a non-citizen national

[5] For use of this report in interpreting the 1940 Act, see *Savorgnan* v. *United States*, 338 U. S. 491, 505.

would be if the Philippine Islands remained under the control of the United States for an indefinite future. It should be decisive in this case that respondent was subjected to deportation and other incidents of the immigration laws by Sections 8 (a) and 14 of the Philippine Independence Act, as part of a major, decisive step toward complete national independence for the Philippine Islands. It will hardly be contended that the United States was without power to provide for Philippine independence. *Hooven & Allison Co.* v. *Evatt, supra.* That case upheld the validity of significant changes in the previously existing trade relationships between the Philippines and this country, changes which were an important part of the transition of the Philippine Islands toward independence.

The precise nature of the transition which began with the 1934 Act was described by this Court in *Hooven & Allison Co.* v. *Evatt, supra,* at 675–678, as follows:

> The Act of 1934 made special provisions for the relations between the two governments pending the final withdrawal of sovereignty of the United States from the Philippines and in particular provided for a limit on the number and amount of articles produced or manufactured in the Philippine Islands that might be "exported" to the United States free of duty. § 6. It provided for the complete withdrawal and surrender of all right of pos-

session, supervision, jurisdiction, control or sovereignty of the United States over the Philippines on the 4th of July following the expiration of ten years from the date of the inauguration of the new government, organized under the Constitution provided for by the Independence Act. § 10 (a). The new Philippine Constitution was adopted on February 8, 1935, and the new government under it was inaugurated on November 14, 1935. * * * *Thus, by the organization of the new Philippine government under the constitution of 1935, the Islands have been given, in many aspects, the status of an independent government, which has been reflected in its relations as such with the outside world.*

* * * * *

The Independence Act, while it did not render the Philippines foreign territory, * * * *treats the Philippines as a foreign country for certain purposes.* * * * [*I*]*t established immigration quotas for Filipinos coming to the United States, as if the Philippines were a separate country, and in that connection extended to Filipinos the immigration laws relating to the exclusion or expulsion of aliens. It also provided* * * * *that citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For purposes of 8 U. S. C. §§ 154 and 156, relating to deportation, the Philippine Islands are declared to be a foreign country.* * * * Foreign service officers of

> the United States may be assigned to the Philippines, and are to be considered as stationed in a foreign country. * * * And the Independence Act, § 6, 48 Stat. 456, 460, provides that "when used in this section in a geographical sense, the term 'United States' includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, American Samoa, and island of Guam." As we have said, the Philippines have frequently dealt with other countries as a sovereignty distinct from the United States. [Emphasis supplied.]

See also, *Cincinnati Soap Co.* v. *United States,* 301 U. S. 308, 319–320, 322–324.

Incident to that same intricate adjustment, Congress clearly had the power, as this Court recognized in the portion of the *Hooven & Allison* opinion quoted above, to change the status as noncitizen nationals of the United States of citizens of the Philippine Islands residing both there and in this country. This power was as broad as the power of Congress to determine initially, following the Treaty of Paris, the status of the inhabitants of the Philippines. The exercise of that power in Sections 8 (a) and 14 of the 1934 Act reflected both the greater autonomy conferred immediately upon the Philippine Islands and the certainty that within a few years the Philippines would be a completely independent state exacting primary

and "permanent" allegiance from its own citizens. Under these circumstances, Congress clearly had the power to take steps to eliminate the problems of dual nationality which would arise if citizens of the Philippine Island became citizens of their own independent national state while retaining their old status as non-citizen nationals of the United States.

Moreover, these arrangements with respect to a territory and a people preparing for complete independence were not only an exercise of the power of Congress under Article 4, Section 3 of the Constitution to "dispose of * * * territory * * * belonging to the United States," but constituted the basis for our relations with the future Republic of the Philippines. These matters, if not political questions, obviously required that Congress be able to exercise in 1934 the same broad and flexible powers that it admittedly had in initially determining the status of the Philippine Islands and their inhabitants. Indeed, the decisions of this Court which recognized that Congress must be able to utilize a variety of solutions in defining the status of Indians and Indian tribes, *United States* v. *Nice,* 241 U. S. 591, 598, support, *a fortiori,* an equally plenary power in defining the relationship to the United States of persons who are about to become citizens of an independent foreign state. See also *Harisiades* v. *Shaughnessy,* 342 U. S. 580, 588–591.

It should be emphasized that there is here involved no question of the power of Congress to provide for the termination of the non-citizen nationality of persons who thereby will be rendered stateless. Respondent and every other person who became by birth a citizen of the Philippine Islands became citizens of the Republic of the Philippines under Art. IV, Sec. 1, Constitution of the Philippines, 30 Phil. Pub. Laws 373, regardless of whether such persons had remained in the Philippines or came to the United States.

Similarly, there is not involved here any constitutionally protected right of respondent to elect to retain his status as a non-citizen national of the United States. American courts, in situations not controlled by a statute or treaty of the United States, have sometimes recognized and applied an international practice of allowing citizens of ceded or conquered territory, who are residing elsewhere, to elect whether to assume the nationality of the new sovereign of such territory. See, for example, *United States ex rel. Schwarzkopf* v. *Uhl,* 137 F. 2d 898 (C. A. 2). The applicability of any such practice to the peaceful separation of the Philippines from this country is highly doubtful. Respondent clearly could not compel the United States to accept him as a citizen, so that any election would be between Philippine citizenship and a continuation of his nebulous status as a non-citizen national of the United States. When, on July 4, 1946, the Republic of

the Philippines became an independent state, respondent became a citizen of a foreign country to which he owes the permanent allegiance which was previously due to the United States, and to which he must look for diplomatic protection. At this point, without more, his status as a non-citizen national, distinguishing him from aliens generally, terminated. In any event, when Congress by the Act of July 2, 1946 (60 Stat. 416) made "Filipino persons" eligible for naturalization as American citizens, it in effect provided, simultaneously with respondent's loss of his status as a non-citizen national, that persons in respondent's position (who do not by their own acts render themselves ineligible) could elect between remaining citizens of the Republic of the Philippines or becoming citizens of the United States. *Application of Viloria,* 84 F. Supp. 584 (D. Hawaii); and see Note, 50 Col. L. R. 371 (1950).

III

IN SECTIONS 8 (A) AND 14 OF THE PHILIPPINE INDEPENDENCE ACT OF 1934, CONGRESS HAS MADE CITIZENS OF THE PHILIPPINE ISLANDS, REGARDLESS OF WHEN THEY CAME TO THIS COUNTRY, SUBJECT TO DEPORTATION FOR ACTS COMMITTED AFTER MAY 1, 1934

We have shown that by 1934 there was no doubt as to the power of Congress to modify the status of citizens of the Philippine Islands as non-citizen nationals of the United States, particularly

as an incident to the transition of the Philippine Islands to complete national independence. Thus, there is no justification for reading Sections 8 (a) and 14 of the Philippine Independence Act otherwise than according to their plain meaning, or so as to produce absurd results, in order to avoid possible constitutional questions.

Respondent was ordered deported from the United States pursuant to Section 19 (a) of the Immigration Act of 1917 on the ground that he has twice been sentenced to imprisonment for one year or more because of conviction of crimes involving moral turpitude committed after entry. The crimes in question were committed in 1941 and 1950, respectively. Respondent contends (Resp. br. 12), and we concede, that unless his status was that of an alien at the time both offenses were committed, the deportation order cannot stand. We contend that Section 8 (a) of the Philippine Independence Act, which became effective May 1, 1934, made petitioner an alien from that date on for deportation purposes.

Section 8 (a) (1), which with Sections 6, 7 and 9 appears under the heading "Relations With The United States Pending Complete Independence" (48 Stat. 459–463), provides in pertinent part that

> SEC. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

> (1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. * * *

It is clearly provided that "For the purposes of the Immigration Act of 1917, * * * and all other laws of the United States relating to the * * * expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens." There is not the slightest suggestion in the quoted language that it is not to apply to such persons who are residing in the United States, and the court below so held, stating (R. 27):

> The Immigration Act of 1917 was one of the statutes specifically envisioned by Congress in providing that for its purposes Filipinos "shall be considered as if they were aliens." Since both convictions occurred after the effective date of the Philippine Independence Act of 1934, Gonzales is properly subject to deportation * * * if he is otherwise subject to its terms.

See also *Mangaoang* v. *Boyd,* 205 F. 2d 553, 556 (C. A. 9), certiorari denied, 346 U. S. 876.

Respondent points out that the second sentence of Section 8 (a) (1) also fixed an annual quota of 50, and then contends, without the slightest support in language, logic or history that the first sentence was intended only to apply the immigration, exclusion and expulsion laws to future immigrants from the Philippines under this quota. As we have pointed out in our main brief (Pet. br. 24), the contemporaneous and repeated administrative construction of Section 8 (a) (1) has applied it to citizens of the Philippines residing in the United States. Moreover, it is inconceivable that Congress would have provided for the deportation of the few criminal or subversive citizens of the Philippines who might enter after May 1, 1934, under such a nominal quota, while remaining indifferent to many more who may have entered freely shortly before that date. That it was clearly understood to apply to citizens of the Philippines residing in the United States is shown by the testimony of Assistant Secretary of State Sayre on the 1939 amendment to Section 8, to the effect that while such persons were to be regarded under the original Section 8 as aliens for immigration purposes, they were not therefore to be treated as aliens for all other purposes (see, *infra,* pp. 25–26).

Again, in seeking to avoid the plain meaning of Section 8 (a) (1), respondent urges that apply-

ing it to Philippine citizens residing in this country would render superfluous Section 14 of the 1934 Act, which, under the heading of "Immigration After Independence" provides that:

> SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.[6]

To the contrary, it is clear from the express terms of the Act that Section 8 (a) (1) was to apply only during the interim Commonwealth or transition period leading to complete independence, while Section 14 became effective only upon independence, and is permanent legislation.[7] Applying without qualification to "persons who were born in the Philippine Islands," Section 14 required that respondent continue to be treated as and alien for deportation purposes after the Philippines became independent on July 4, 1946.

Section 2 of the Act of August 7, 1939 (53 Stat. 1226, 1230), adding paragraph (d) to Section 8 of

[6] A cognate statute, the Immigration Act of 1924, as amended, defined "immigration laws" as including "all laws, conventions and treaties of the United States relating to the immigration, exclusion, or expulsion of aliens." 8 U. S. C. 224 (f). An identical definition appears in Section 101 (a) (17) of the Immigration and Nationality Act of 1952.

[7] Section 14 has been recodified as 22 U. S. C. 1281a.

the 1934 Act, to which respondent refers at pp. 18–19 of his brief, far from manifesting an intention by Congress to exclude Filipinos residing within the United States from the express terms of Section 8 (a) (1), was enacted for the very reason that that section did so apply. This is made emphatically clear by the testimony before The Senate Committee on Territories and Insular Affairs of Francis B. Sayre, Assistant Secretary of State and Chairman of the Interdepartmental Committee on Philippine Affairs, which drafted the legislation in question. Referring to Section 2 thereof, Mr. Sayre said (Hearings on S. 1028, 76th Cong., 1st Sess., p. 30):

> As to the first of these, while the rights and privileges of American nationals in the Philippines are adequately provided for in the Tydings-McDuffie Act, there is no corresponding provision for Filipinos in the United States. Moreover, because the Tydings-McDuffie Act specifically provides that Filipinos, in immigration matters, are to be considered as if they were aliens, and because Filipinos are not citizens of the United States although they owe allegiance to the United States, the idea has arisen in some quarters of the United States that Filipinos are aliens in every sense of the word. This, of course, is not true under the existing law. In order to guard against attempts to discriminate against Filipinos as aliens, the bill makes clear that Filipinos in the United States shall

> continue to enjoy until July 4, 1946, the rights and privileges which they enjoyed when the Commonwealth government was inaugurated.

As we have indicated (*supra,* p. 24), the clear implication of this legislation is that Filipinos residing in the United States, as well as those coming from the Philippines, had already been made aliens "in immigration matters" by Section 8 (a) (1) of the 1934 Act. The 1939 amendment sought merely to make certain that pending full independence such resident Filipinos would not suffer discrimination as aliens in other areas notably economic.[8]

Since, as we have shown, respondent became an alien for purposes of deportation when the Philippine Independence Act became effective on May 1, 1934, he obviously did not cease to be such when the Republic of the Philippines became an independent nation on July 14, 1946, when Section 14 of the Philippine Independence Act became effective. Indeed, Section 14 was largely superfluous.[9] For, on that date, respondent ad-

[8] Section 2 was enacted as part of a larger act, the other provisions of which were concerned with tariff and trade matters. The bill was characterized by Mr. Sayre as "confined to economic and commercial arrangements" (Hearings, supra, p. 22).

[9] The express terms of Section 14, particularly its parenthetical application of laws governing ineligibility for citizenship, indicate that it was probably intended to insure the termination of the temporary suspension of the racial bars of Section 13 (c) of the Immigration Act of 1924, which was embodied in Section 8 (a) (1) of the 1934 Act.

mittedly became a citizen of an independent foreign state, to which he owed his primary, permanent allegiance, and to which he must thereafter turn for passports and diplomatic protection. At that point, the entire rationale of *Gonzales* v. *Williams, supra,* disappeared and, without more, respondent ceased to be a national of the United States and became an alien in relation to the United States for all purposes.[10] Respondent's contention that he is not now an alien was summarily rejected by the court below (R. 26), a result reached consistently by other lower federal courts. *Application of Viloria,* 84 F. Supp. 584, 586 (D. Hawaii); *Cabebe* v. *Acheson,* 84 F. Supp. 639, 640 (D. Hawaii), affirmed, 183 F. 2d 795 (C. A. 9); *Mangaoang* v. *Boyd, supra,* at 554. See also *Gancy* v. *United States,* 149 F. 2d 788 (C. A. 8).

IV

RESPONDENT MADE AN "ENTRY" INTO THE UNITED STATES FOR THE PURPOSES OF DEPORTATION PURSUANT TO SECTION 19 (A) OF THE IMMIGRATION ACT OF 1917

In our main brief, we treated respondent's contention (Resp. br. 8–12) that because he was a

[10] That Congress so understood the effect of independence is made clear by the appearance in appropriations acts after 1946 of provisions exempting Filipinos from the stipulation that payment should not be made to employees who did not owe allegiance to the United States. See Appropriations Act of July 30, 1947, 61 Stat. 608; Appropriations Act of April 20, 1948, 62 Stat. 193; Appropriations Act of August 24, 1949, 63 Stat. 661.

non-citizen national of the United States when he came from the Philippine Islands in 1934, he cannot be regarded as having made an "entry" for the purposes of Section 19 (a) of the Immigration Act of 1917.

We now consider his related contention (Resp. br. 6–8) that he did not make an "entry" within the meaning of Section 19 (a) in that when he came to the United States in 1930 he did not come from a foreign port or place, but from a possession of the United States. It is sufficient to say that statutes should be interpreted in a practical sense so as to carry out a clear Congressional purpose. Indeed, this Court has construed the term "entry" in such a way as to effectuate fairly the purposes of the immigration laws. Compare *Volpe* v. *Smith,* 289 U. S. 422, with *Delgadillo* v. *Carmichael,* 332 U. S. 338.

Moreover, there is nothing in the statutory language which requires that in the present context "entry" be read as "entry from a foreign place." As our discussion in our main brief (Pet. br. 11–7) made clear, the concern of Congress in enacting the instant provision was to make aliens who committed crimes of the specified type deportable without limit as to time. The legislative history shows conclusively that Congress sought by this provision to terminate the United States residence of undesirable alien criminals, and in that context, as the court below

said in *United States* v. *Yamamoto,* 240 Fed. 390, 391 (C. A. 9):

> The consideration which induced the amendment was that the objectionable aliens were in the United States, not the manner in which they got here.

In the *Yamamoto* case, as well as in *United States* v. *Sui Joy,* 240 Fed. 392, the aliens involved had entered Hawaii before it came under United States sovereignty, and, thus, clearly never came into the United States from a foreign place. This contention of respondent, like his related argument that he did not make an "entry" because he was not an alien when he came to the United States, would have the effect of practically exempting from our deportation laws thousands of Philippine aliens who came to this country before May 1, 1934, the effective date of the Philippine Independence Act (Pet. br. 22–23). See *Eichenlaub* v. *Shaughnessy,* 338 U. S. 521, 529–532.

Also, in Section 8 (a) (4) of the Philippine Independence Act, Congress provided that "For the purposes of sections 18 and 20 of the Immigration Act of 1917, as amended, the Philippine Islands shall be considered to be a foreign country." Section 20 of the 1917 Act (8 U. S. C. 156) provides that "The deportation of aliens * * * shall * * * be to the country whence they came or to the foreign port at which such aliens embarked for the United States." By analogy, and in view of the clear purposes of Section 8 (a) (1), the

Philippines should be regarded as a foreign country for the purposes of respondent's "entry" into the United States, if coming from a foreign place is a necessary element of an "entry." In *Hooven & Allison* v. *Evatt,* 324 U. S. 652, 669–679, this Court, in holding that articles brought after 1934 from the Philippines to this country were imports, emphasized the necessity for giving a practical effectuation to the purpose of Congress in the Philippine Independence Act to treat the Philippines as a foreign country for certain purposes.

V

THE PRACTICAL CONSIDERATIONS PRESENTED BY THIS CASE

If we are sustained in our contentions, then it will follow that every citizen of the Philippine Islands residing in the United States will be subject to deportation for acts committed after May 1, 1934, the effective date of the Philippine Independence Act. It also will follow that with the establishment of the independent Republic of the Philippines in 1946, citizens of the Philippine Islands who were not citizens of the United States lost their status as non-citizen nationals of the United States, regardless of whether they were residing in the United States. There would thus be avoided a substantial area of dual nationality with its perplexing problems. At the same time, since citizens of the Philippine Islands were made eligible in 1946 for United States naturalization,

the practical effect is to give persons in respondent's position, and who have not disqualified themselves by their own acts, a choice of Philippine or American citizenship. These consequences are so eminently fair and desirable that Section 8 (a) and 14 of the Philippine Independence Act should be given the normal and unstrained interpretation which brings them about.

CONCLUSION

We respectfully submit that the judgment below should be reversed.

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